1996

Elaine D. Broderick v. Boyd E. Broderick : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS
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ELAINE D. BRODERICK, Plaintiff-Appellee. vs. BOYD E. BRODERICK, Defendant-Appellant.	:	APPELLANT'S (DEFENDANT'S) REPLY BRIEF ON APPEAL Appellate Court No. 960775 Priority 15
ALMA L. BRODERICK and SEPHRONIA L. BRODERICK, Interveners and Appellants	:	Appeal from the Order of the Fourth Judicial District Court Millard County, The Honorable Guy R. Burningham

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ELAINE D. BRODERICK,	:	
		APPELLANT'S (DEFENDANT'S)
Plaintiff-Appellee.	:	REPLY BRIEF ON APPEAL
vs.	:	
BOYD E. BRODERICK,	:	
Defendant-Appellant.	:	Appellate Court No. 960775 Priority 15
	:	
ALMA L. BRODERICK and SEPHRONIA L. BRODERICK,	:	Appeal from the Order of the Fourth Judicial District Court
	:	Millard County, The Honorable
Interveners and Appellants	:	Guy R. Burningham

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ARGUMENT[1]

POINT I: THE INTERVENORS HAVE CORRECTLY STATED THEIR CASE REGARDING FARM PROPERTY AND DESERET WATER STOCK

Both the Appellee Wife and Intervenor Parents correctly point out that the resolution of the issue regarding ownership of the farm property and Deseret Water stock "may affect the overall equity of the property settlement."[2] Defendant Husband had already acknowledged that the disparity in the property settlement would be greater than already indicated were this Court to grant the same.[3]

Defendant Husband agrees with the Intervenors that

> [t]he [marshaled] evidence shows a joint farming venture. All parties put money down. All parties contributed to monthly payments. All parties paid toward principal and interest. All parties participated in farming. All parties paid portions of the water stock assessments. All parties paid towards the water stock debt.
>
> The evidence is overwhelming that the land and water stock were owned by all four of the parties. There is no factual support for the court's findings that the Intervenors had no interest in real property (the farm) and the Deseret Irrigation Company water stock. It is an abuse of discretion to ignore the joint farming venture, to ignore the deeds, and to ignore what the parties intended.[4]

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[1] To the degree this Court desires citation to the record rather than transcript and documents included in the Addendum in Appellant Husband's Opening Brief, a copy of the Opening Brief with all citations to the record included is included in the Addendum.

[2] Page 4, paragraph one of the Brief of Appellee-Wife; Page 1, paragraph 1 of Appellant Intervenors.

[3] Page 10, paragraph 1 of the Opening Brief of Appellant Husband.

[4] Pages 5-6, paragraphs 4-5 of Brief of Appellant Intervenors.

Assuming that this Court would agree, the impact of allowing the award on the Defendant Husband would be as follows:[5]

	Appellee-Wife	Appellant-Husband
Present Status	$ 70,587	< $ 509 >
Adopting Intervenors' Position	$ 70,587	< $ 16,359 >

For reasons noted below, regardless of the position this court takes on the Intervenor Parents' claims, the property division by the trial court is an abuse of discretion.

POINT II: THE PROPERTY DIVISION IMPROPERLY ADJUSTED FOR THE PARTIES PRE-MARITAL POSITIONS AND MUST BE MODIFIED[6]

Appellee-Wife's citation of the general rule that equity requires each party retain the separate property brought into the marriage[7] failed to include standard exceptions such as "whether the property has been commingled, whether the other spouse has by his or her efforts augmented, maintained or protected the separate property, and

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[5] These figures are computed by taking the values of the property division summarized on the Table on pages 7-8 of Appellant Husband's Brief and lowering the value of the farm by fifty percent (50%) from $ 20,780, to $ 10,390 and lowering the value of the Deseret Water stock fifty percent (50%), from $ 10,920 to $ 5,460. This is done on the assumption that the parties and Intervenors are 50/50 joint owners.

[6] The Appellee-Wife's Brief objects to the argument in Appellant-Husband's brief that the court's findings were inconsistent regarding the award of the I.R.S. debt. In light of the fact that no effort has been made to have the lower court correct a clerical error pursuant to Rule 60(a) U.R.C.P., Appellee-Wife should be limited in continuing to make the argument here, not having availed themselves of the opportunity in the court below.

[7] Appellee Wife's Brief at 10.

whether the distribution achieves a fair, just, and equitable result."[8] In this case, each of these three standards is applicable, and when applied, indicates the property is inequitable and an abuse of discretion.

First, as to commingling, in the Amended Findings, the trial court specifically found that when the parties refinanced the Southgate, California, home that "[t]hese debts and assets were all commingled, with the exception of the defendant's tax debt."[9] There is no case law in Utah that directly establishes how a court would make a determination that a pre-marital debt (as distinct from property) was not commingled when assets that were used to pay the debt were, in fact, commingled. The debt was satisfied by proceeds from a loan, incurred after marriage, and for which both parties were liable, being secured by property in both of their names. The Appellee-Wife's appellate brief did not address the argument that "no evidence exists to contradict that the [I.R.S.] payment had been a gift or other non-liability situation from one spouse to the other." [10]

Second, Appellee-wife's efforts to balance the disparate property division by subtracting the initial equity the Appellee-Wife had in the home at the time of marriage fails to take in to account that the Appellant-Husband contributed to the valuation of the home by giving her all of his salary when he worked for Hughes or Quaker Oats[11] as

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[8] Dunn v. Dunn, 802 P.2d 1314, 1321 (Ct. App. Utah 1990).

[9] Record at 162, lines 15-16.

[10] Appellant Husband's Opening Brief at 11.

[11] Record at 295-296.

well as repairing, painting and making other home improvements (such as working on a redwood deck for the home.[12] Furthermore, as the home in Southgate, California, was "commingled,"[13] and since marital efforts and funds helped enhance the value of the home,[14] the appreciation in value of the home would accrue to both parties. The trial court found that the gross equity in home at the time of the marriage was $ 51,000.00;[15] later, in March of 1993, when the home sold

> the plaintiff and defendant received a net sum of $ 52,413.04. Of the net proceeds, the plaintiff and defendant paid $36,390.04 to retire their farm mortgage obligation; plaintiff and defendant used the remaining $ 16,023.00 for living and farm expenses.[16]

Thus, the appreciated value of the home, improvements, and inflation allowed the entire I.R.S. debt belonging to Appellant-Husband as well as other marital and pre-martial obligations of the Appellee-Wife[17] to be paid, and provide to both parties an amount slightly over the initial $ 51,000.00 gross equity that the court found existed in the home at the time of marriage.[18]

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[12] Record at 299, 300, and 337.

[13] Record at 162, lines 15-16.

[14] Record at 215, 277-278, 300.

[15] Record at 163, Amended Findings of Fact and Conclusions of Law, ¶ 6; Record at 146 ¶ 1.

[16] Record at 160.

[17] Record at 295.

[18] It is important to note that gross equity in a property brought into the marriage does not equate with net proceeds or net worth (which is what was to be divided at the time of the divorce.) Not only are there selling costs before net equity is obtained from an asset, but also there is uncontroverted evidence that Appellee-Wife brought some

In addition, not only was the property commingled, but it was the Appellant-Husband that brought in the expertise necessary to farm. While entering into the farming operations was a joint decision,[19] it was undisputed that the Appellee-Wife was not involved in the farming operations and did not know how to run or operate a farm.[20]

Third, in this case, the length of the parties' marriage indicates that it would be inequitable to restore the parties to their pre-marital condition. Equitable efforts to restore parties to their respective position before marriage is often emphasized when a marriage is of a short rather than a long duration. Unfortunately, the case law is not crystal clear on how to define what is a long or short marriage. For example, marriages of approximately 38 years is of long duration;[21] 13 years is not short;[22] 7 years is of short duration.[23] In this case, the parties lived together for almost two years prior to

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debt of an unknown amount into the marriage as well as that asset. See record at 295 in which Appellant says about Wife that "[s]he had a lot of credit cards when I married her."

[19] The record indicates that Elaine wanted to move to Utah because of the riots in California, and she called the Intervenors many times about finding a farm. They found five farms and Appellee-Wife picked out the farm they purchased. See Record at 278-279, 312, 321.

[20] Record at

[21] Gardner v. Gardner, 748 P.2d 1076, (Utah 1988).

[22] Burke v. Burke, 733 P.2d 133, 135 (Utah 1987).

[23] Rappleye v. Rappleye, 855 P.2d 260, (Ut. App. 1993).

marriage[24] and then were married for slightly over nine years.[25] This marriage is not of a "short duration;" therefore, the length of this marriage is not an equitable basis for restoring the parties to their pre-marital positions.

POINT III: THE TRIAL COURT IMPROPERLY AWARDED ALIMONY AGAINST THE HUSBAND

Appellee-Wife has failed to respond to the arguments raised by Appellant-Husband in that the third factor under the test enunciated in Jones v. Jones[26] — the ability of the payor spouse to provide for the same — was not addressed by the court. Furthermore, any reference by Appellee-Wife to an "able-bodied" Appellant-Husband is somewhat superficial; the trial court heard all of the evidence regarding the Appellant-Husband's abilities, inability to find work, and the limited income available from the joint farming enterprise[27], and only imputed monthly income to him of $ 746.67. Her income was $ 1,028.50.

The property settlement of the parties does not justify the imposition of alimony on the Appellant-Husband; either he is in a negative position of < $ 509.00 >, or, if this Court grants the Intervenors' Position, < $ 16,359.00>. On top of this, Appellant-Husband does not have an asset or income producing base that would warrant the

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[24] Record at 297, lines 12-15.

[25] The Motion of Appellee-Wife to Amend the Original Decree was filed with sufficient time to arrest the original entry of divorce and postpone termination of the marriage until entry of the decree.

[26] 700 P.2d 1072 (Utah 1985)

[27] Record at 261, 263.

imposition of alimony.[28]

The effort to impose alimony and make the parties' monthly positions even more disparate — $ 1,203.50 for Appellee-Wife and $ 571.67 for Appellant-Husband — ignores basic reality that has been acknowledged previously by the Utah Supreme Court. "When one blanket is cut to fit two beds, it seldom will cover them both."[29] In other words,

> [t]his is one of those all-too-frequent situations where the court was confronted with the impossible task of attempting to cut one blanket to cover two beds and satisfy both parties when the truth of the matter is that they cannot afford a divorce, but must have one anyway.[30]

The Appellee-Wife married Appellant-Husband "for better or for worse." "This does not mean the 'better' for her and the 'worse' for him."[31]

Even were alimony justified, the provisions of U.C.A. § 30-3-5(7)(h) were not followed. There was no limitation on the number of years alimony would be in effect. At the trial, the Appellee-Wife only asked for alimony as long as the duration of the marriage.[32] There is no way to determine when alimony will terminate in this case.

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[28] Appellant-Husband testified that he lacks the funds for necessary capital improvements and purchase of machinery for the farm. He is forced to hire outside labor for the swathing, bailing, and related operations. (Record at 261, 265, 267.) His is paying rent of $ 150.00 per month to his parents for a small trailer (Record at 259). Appellant-Husband was also obligated to pay all outstanding debts of the marriage (Record at 169.)

[29] Gale v. Gale, 258 P.2d 986, 987 (Utah 1953).

[30] Bader v. Bader, 424 P.2d 150, 151 (Utah 1967).

[31] Anderson v. Anderson, 422 P.2d 192, 194 (Utah 1967).

[32] Record

As the Decree does not comply with statutory requirements, Appellant-Husband should be relieved of the effect of that judgment until it is corrected.

CONCLUSION

The Intervenor Parents have correctly claimed their portion of the joint agricultural enterprises of the parties to this litigation.

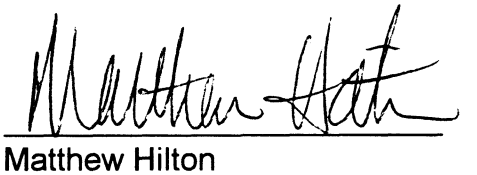
It is not equitable to restore the Appellee-Wife to her premarital financial condition because of extensive commingling of assets, contributions by the Appellant-Husband, and the nine-year length of the parties' marriage.

Permanent alimony is not appropriate when Appellee-Wife's income and net-worth significantly exceed that of Appellant-Husband and statutory requirements were not complied with.

For all of the foregoing, the trial court's division of property and award of alimony are inconsistent in justification and create reversible error for an abuse of discretion by imposing inequitable treatment on Appellant-Husband.

DATED this 26th day of September, 1997.

MATTHEW HILTON, P.C.



Matthew Hilton
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ADDENDUM

III. JURISDICTIONAL BASIS OF THE COURT OF APPEALS

The date of the order appealed from in this case is November 1, 1986. The notice of appeal was filed on November 27, 1986. The Court of Appeals has jurisdiction of this matter pursuant to U.C. A. § 78-2a-3(2)(h).

A post-judgment Rule 60(b) motion was heard June 17, 1997 and was orally denied. The order denying the motion has not yet been executed or filed by the trial court, and therefore is not, at this juncture, part of this appeal.

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue # 1: Did the trial court abuse its discretion in awarding alimony to the Appellee under the standard announced in Jones v. Jones, 700 P.2d 1072 (Utah 1985) and the statutory standards of U.C.A. § 30-3-5(7).

"[A] trial court's award of alimony is reviewed for clear and prejudicial abuse of discretion." Endrody v. Endrody, 914 P.2d 1166, 1168-1169 (Utah. App. 1996) (citation omitted.) The issue was raised in pages 2-3 of the memorandum filed by counsel for Appellant, Eldon Eliason, when he objected to the Appellee's motion to amend the earlier order of the court which had not awarded alimony. The denial of alimony was also addressed in Intervener's Objection to Amend the Findings (R. 116.), which were concurred in by the Appellant by his counsel in the objection filed on March 29, 1996. (R. 125-122.)

Issue # 2: Did the trial court abuse its discretion when it assessed a judgment against the Appellee in favor of the Appellant in the amount of $ 20,256.72, which was a payment of Appellee's pre-martial obligation to the I.R.S.?

"[T]he trial court's property division is reviewed under an abuse of discretion standard." Endrody v. Endrody, 914 P.2d 1166, 1168-1169 (Utah App. 1996) (citation omitted).

Objections to the inclusion of an independent judgment for an I.R.S. obligation were specifically raised in the arguments of the Intervenors in response to the Appellee's Motion to Amend the Findings and Decree (R. 101 - 97.), which were concurred in by the Appellant by his counsel in the objection filed on March 29, 1996 (R. 122.)

Issue # 3: Did the trial court abuse its discretion when it entered a judgment against the Appellee in favor of the Appellant in the amount of $ 20,256.72, when the legal conclusion does not comport with the Findings of Fact made by the trial court?

If "a trial court should make findings of fact necessarily inconsistent with each other, such action would be capricious and . . . such inconsistent findings would not be permitted to stand." Malstrom v. Consolidated Theaters, 290 P.2d 689, 690-691 (Utah 1955).

An objection to the form and nature of the orders entered by the trial court from which an appeal are taken need not be raised before the trial court when such orders are prepared by the Appellee's counsel; in the alternative, if the pleadings are improper, and were prepared by the Appellee's counsel, then the inconsistent findings are to be stricken, along with the legal conclusion.

V. Dispositive Legal Citations

Dispositive legal citations in this case include the following:

U.C.A. § 30-3-5(1): "When a decree of divorce is rendered, the court may include in its equitable orders relating to the children, property, debts or obligations, and parties: . . .."

U.C.A. § 30-3-5(7)(h): "Alimony may not be ordered for duration longer than the number of years that the marriage existed unless, at any time prior to the termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time."

VI. Statement of the Case

After living together for approximately two years in California, (R. 297, lines 12-15.), the Plaintiff-Appellee wife and Defendant-Appellant husband were married in California on October 24, 1987. (R. 203, line 23.) In December of 1987, the parties mortgaged what had been a pre-martial home of the Plaintiff, (which home had been placed in the name of both parties). (Amended Decree, ¶ 8, R. .) While some monies were used for points, adding on to the home, and for an eventual down payment on a farm in Utah, the majority of the funds were used to pay a premarital I.R.S. debt of the Defendant. (R. 168.) The Defendant had not participated in making house payments until he was married (R. 297, lines 18-23). When working for Hughes or Quaker Oats, Appellant gave all of his salary to the Appellee which she administered as she thought best, (R. 298-299), from a joint bank account (R. 215, lines 20-25), he relying on the community property provisions of the state of California (R. 299, lines 14-18). One-half of the house payment was greater than the rent he would have been paying elsewhere (R. 299, line 19 - R. 300, line 2.) He also worked on the home, including placing on a

redwood deck (R. 300, lines 3-4). In May 1990, the Appellee and Appellant purchased a 70 acre farm in Delta, Utah. (R. 161, lines 17-20.) The parties separated in June of 1994. (R. 159, line 6.) Trial was held on October 13, 1995. (R. 185.)

During the trial, the trial Court reviewed an issue regarding the payment of a pre-marital I.R.S. obligation of Appellant. In the Amended Findings of Fact and Conclusions of Law, the Court found that an I.R.S. obligations of the Appellant incurred prior to their marriage was not commingled with the property of the parties. The amount of the obligation was $ 20,256.72. (R. 162-161, page 3-4, ¶ 8.) Thereafter, however, the trial court found that the Appellant's I.R.S. obligations relative to the Appellee were "one-half of which amount defendant may retain and one-half which the plaintiff shall receive, in the amount of $ 10,128.36." (R. 157, page 8, ¶ 25.) Thereafter this Court concluded that the "Plaintiff is entitled to judgment against the Defendant in the amount of $ 20,256.72 which was paid by the plaintiff to satisfy the defendant's debt with the I.R.S." (R. 155, page 10, ¶ 39.) The Amended Decree awarded judgment to the Plaintiff against the Defendant for $ 20,256.72. (R. 168, page 3, ¶ 11.) The property distribution arising out of the Amended Findings of Fact and Conclusions of Law is properly summarized as follows:

Appellee		Appellant		Interveners	
Assets					
Sutherland Home	$36,250	Farm	$ 20,780		
Water Payment from Defendant	$ 9,203	Melville Water	$ 27,900	Melville Water	$ 27,900

		Deseret Water	$ 10,920	Applt. to Pay	$ 2,700	
Payment from Interveners	$ 4,500					
Deseret Water Shares	$ 728					
Judgment for I.R.S. Gift	$ 20,256					
	$ 70,937		$ 59,600		$ 30,600	
Debts						
½ 1992 I.R.S.Debt	$ 350	Suther. Hm. Loan	$25,000	Rental Costs	$ 4,500	
		Water Liability	$ 2,700			
		Water Liability	$ 9,203			
		Marital Debts	$ 2,600			
		Judg. for IRS. Gift	$ 20,256			
		½ 1992 I.R.S. Debt	$ 350			
	$ 350		$60,109		$ 4,500	
NET PROPERTY	$ 70,587		(— $ 509)		$ 26,100	

(The valuations of the home, farm, and water are taken from the Amended Findings of Fact and Conclusions of Law (R. 164-152.); the intervenor's obligation of $ 4,500.00 to Appellee is found on page 4, ¶ 9 (R. 161); intervenor's loans to the parties in the

amount of f$ 2,700.00 is found on page 6, ¶ 17 (R. 159.); page 10, ¶ 5 (R. 155.); the joint IRS tax liability for 1992 is found on page 11, ¶ 40 (R. 154.); the payment to the Appellee for the water stock in the amount of $ 9,203.36 is taken from the Decree of Divorce (R. 169.)

The trial court also found that the Appellee received $ 229.00 in a monthly pension benefit and $ 799.900 in monthly social security disability benefits, for a total monthly income of $ 1,028.50. Defendant had $ 736.67 income imputed to him. (R. 163, ¶ 5.) Alimony of $ 175.00 per month was awarded in favor of Appellee. (R. 163.) Paragraph 7 b of the Amended Findings of Fact and Conclusions of Law (R. 162.) and Paragraph 10 of the Amended Decree (R. 168.) did not designate when the alimony was to terminate or any extenuating circumstances that justified an award of the same beyond the time period of the marriage.

VII. Summary of the Arguments

The trial court's award of alimony clearly abused its discretion when it failed to consider the binding standards articulated by the Utah Supreme Court in the case of Jones v. Jones.[1]

The trial court clearly abused its discretion when it failed to properly take into account the "ability of the husband to provide support."[2] The trial court also failed to follow the statutory requirements of U.C.A. § 30-3-5(7)(h) in awarding alimony for an unlimited time . The Court also abused its discretion in (1) awarding a judgment for a pre-marital

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[1] 700 P.2d 1072 (Utah 1985).

[2] Id. at 1075.

debt of the Appellant paid, in part, by Appellee, almost eight years before the decree was entered and (2) entering a judgment that did not comport with the Findings of Fact and Conclusions of Law.

VIII. Argument

A. The Award of Alimony Was Clearly An Abuse of Discretion

The trial court found that Appellee had monthly income of $ 1, 028.50 and Appellant had imputed monthly income of $ 746.67. When the alimony ordered by the Court is taken into account, the monthly income of the Plaintiff-wife becomes $ 1,203.50 and that of the Defendant-husband becomes $ 571.67. If a minimum debt service of $ 300.00 per month secured by the Melville water stock (on which Appellant has already received a cash payment for her portion) is made, the imputed income of Appellant is lessened to $ 271.67. The payment of rent by Appellant in the amount of $ 150.00 per month (R. 259, lines 17-22) would leave the Appellant with $ 121.67 for all of the personal living expenses as well as other debt service imposed by the trial court. Awarding alimony under these circumstance failed to take into account the financial situation of the Appellant as required by the Utah Supreme Court in the case of Jones v. Jones. The property settlement and debt obligations of parties do not justify a different result. When the division of property is completely resolved, the property interests balance as follows: Appellee receives $ 70,587.00, Appellant receives a negative $509, and Intervenors receive $ 26,100.00. (In the event that Intervenors are granted additional relief, the disparity will increase.) For all of the foregoing, it was an abuse of discretion to award alimony under the facts of this case.

Even if any award of alimony is proper, the provisions of U.C.A. § 30-3-5(7)(h) provide that "[a]limony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to the termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time." Paragraph 10 of the Amended Decree (R. 168.) did not designate when the alimony was to terminate or any extenuating circumstances. As the Decree does not comply with the statutory requirements, Appellant should be relieved of that effect of the judgment until it is corrected in accordance with law.

B. Awarding Appellee the "IRS Judgment" Was An Abuse of Discretion

During the trial, the trial court reviewed an issue regarding the payment of a pre-marital I.R.S. obligation of Defendant Boyd E. Broderick. In the Amended Findings of Fact and Conclusions of Law, the Court found that this payment was to be divided between the parties "one-half of which amount defendant may retain and one-half which the plaintiff shall receive, in the amount of $ 10,128.36." (R. 157, ¶ 25.) Thereafter this Court concluded that the "Plaintiff is entitled to judgment against the Defendant in the amount of $ 20,256.72 which was paid by the plaintiff to satisfy the defendant's debt with the I.R.S." (R. 155, ¶ 39.) The Amended Decree awarded judgment to the Plaintiff against the Defendant for $ 20,256.72. (R. 168, ¶ 11.) The amount of the judgment is in error for at least three reasons.

First, having already found in paragraph 25 of the findings that one-half of the I.R.S. debt could be retained by the Appellant, or $ 10,128.36, an award of $ 20,256.72 against the Appellant as a judgment for the entire I.R.S. payment is in error.

"The importance of complete, accurate and consistent findings of fact in a case tried by a judge is essential to the resolution of dispute under the proper rule of law." Smith v. Smith, 726 P.2d 423, 426 (Utah 1986). Indeed, if "a trial court should make findings of fact necessarily inconsistent with each other, such action would be capricious and that such inconsistent findings would not be permitted to stand." Malstrom v. Consolidated Theaters, 4 Utah2d 181, 290 P.2d 689, 690-691 (Utah 1955).

Second, assigning the Appellant total liability for the I.R.S. debt is an abuse of discretion when no evidence exists to contradict that the payment had been a gift or other non-liability situation from one spouse to the other.[3] Had there been any intent to hold the Appellant liable for the I.R.S. obligation, it could easily have been included in a pre-marital or post-marital agreement[4] or some other evidence of intent to hold a party liable for a paid debt in the event of a divorce.

Third, for the significant disparity of property division, and the fact that the Appellant contributed all of his salary during the marriage to the family checking account in reliance on the marriage relationship,[5] it is inequitable under the doctrine of

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[3] This concept follows the standard used in evaluating gifts and exchanges of inherited or other property between spouses who later divorce. Osguthorpe v. Osguthorpe, 804 P.2d 530, 535 (Utah App. 1990), citing Mortensen v. Mortensen, 760 P.2d 304, 308(Utah 1988) (Emphasis added.) See also Willey v. Willey, 866 P.2d 547, 555 (Utah App. 1993).

[4] Matter of Estate of Beesley, 883 P.2d 1343, 1346 (Utah 1994).

[5] See Hearing Transcript (R. 297-300.) pointing out that he had lived there for two years before the marriage without making house payments (R. 297, lines 11-20), did not participate in making house payments until he was married (R. 297, lines 18-23), and when working for Hughes or Quaker Oats, gave all of his salary to the Plaintiff which she administered as she thought best, (R. 296, line 7 - R. 295, line 15), from a

equitable estoppel (as raised in Appellant's answer) to now impose liability on him for this newly created, inequitable obligation arising from conduct over nine years before. There was no evidence introduced indicating that at the time of the payment of the I.R.S. obligation there was a contemporaneous understanding or attempt by the Appellee to hold the Appellant liable for the debt or that there was any intent to preserve the payment as an asset of the Appellee.

Thus, regardless of the theory used, awarding an independent judgment for the entire amount of the payment made for Appellant's pre-marital I.R.S. obligation does not follow "logically from, [nor] is supported by the evidence and controlling legal principles [or equity]." Smith v. Smith, 726 P.2d 423, 426 (Utah 1986).

IX: Conclusion

The trial court abused its discretion in determining to award alimony to Appellee as well as an judgment for a pre-marital I.R.S. obligation of the Appellant. In awarding alimony, the trial court clearly abused its discretion when it failed to consider the binding standards articulated in the case of Jones v. Jones, [6] wherein the Utah Supreme Court reaffirmed three factors that must be considered when making an award of alimony. The trial court clearly abused its discretion when it failed to properly

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joint bank account (R. 215, lines 20-25), he relying on the community property provisions of the state of California (R. 295, lines 14-18), which payment was greater than the rent he would have been paying elsewhere (R. 295, line 19 - R. 300, line 2.) Having made such payments, and worked on the home, including placing on a redwood deck (R. 300, lines 3-4), because of the marital relationship, the Plaintiff may not now ignore the marriage relationship to regain a gift she made over nine years ago as part of that relationship.

[6] 700 P.2d 1072 (Utah 1985).

take into account the "ability of the husband to provide support."[7] The trial court also failed to follow the statutory requirements of U.C.A. § 30-3-5(7)(h) in awarding alimony for an unlimited time .

The trial court further abused its discretion in (1) awarding a judgment for a pre-marital debt of the Appellant paid, in part, by Appellee, almost nine years before the decree was entered and (2) entering a judgment that did not comport with the Findings of Fact and Conclusions of Law.

X: Addendum

The following documents are included with Appellants' Opening brief as an Addendum:

1. Amended Decree of Divorce dated October 31, 1996, filed November 1, 1996.
2. Amended Findings of Fact and Conclusions and Law, dated October 31, 1996, filed November 1, 1996.
3. Notice of Appeal dated November 27, 1996, filed November 27, 1996.
4. Transcript of Trial, pages 1, 19, 77, 115-118.
5. Objection to Motion to Proposed Finding, Memorandum and Closing Argument from Appellants' Counsel, pages 1-4.
6. Objection to Motion to Amend, etc., Interveners, pages 1, 5-6

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[7] Id. at 1075.

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IN THE UTAH COURT OF APPEALS

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ELAINE D. BRODERICK,	:	
Plaintiff-Appellee.	:	MAILING CERTIFICATE
vs.	:	
BOYD E. BRODERICK,	:	
Defendant-Appellant.	:	Civil No. 960775
_____	:	
ALMA L. BRODERICK and SEPHRONIA L. BRODERICK,	:	
Intervenors and Appellants	:	

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I hereby certify that in the early morning hours of the 27th day of September, 1997, I placed in the United States mail, postage prepaid, first class, a copy of the document entitled APPELLANT'S (DEFENDANT'S) REPLY BRIEF ON APPEAL filed in this case, to the Utah Court of Appeals and the following counsel of record:

Utah Court of Appeals
230 South 500 East
Salt Lake City, UT 84102

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DATED this 27th day of September, 1997.

Matthew Hilton for Matthew Hilton, PC

STATE OF UTAH)
:
COUNTY OF UTAH)

On the 27th day of September, 1997, Matthew Hilton appeared before me and swore under oath and penalty of perjury that he had signed the foregoing mailing certificate and that the statements contained therein were true.

DATED this 27th day of September, 1997.

Notary Public
JEANNE M. LEVIE
825 West 2000 North
Mapleton, Utah 84664
My Commission Expires
September 30, 2000
State of Utah

NOTARY PUBLIC